

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN SMITH,

Defendant.

CR 24–21–BU–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 28.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Smith is charged with two counts of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2 (Counts 1–2), one count of false statements to a government agency, in violation of 18 U.S.C. § 1001(a)(1) (Count 3), one count of social security fraud, in violation of 42 U.S.C. § 1383(a)(2) (Count 4), and one count of theft of

government money, in violation of 18 U.S.C. § 641 (Count 5), as set forth in the Indictment. (Doc. 1.) Judge DeSoto recommends that this Court accept Smith's guilty plea as to Count 5 after Smith appeared before her pursuant to Federal Rule of Criminal Procedure 11. The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 28) is ADOPTED in full.

IT IS FURTHER ORDERED that Smith's motion to change plea (Doc. 20) is GRANTED.

IT IS FURTHER ORDERED that Smith is adjudged guilty as charged in Count 5 of the Indictment.

DATED this 6th day of November, 2024.



Dana L. Christensen, District Judge
United States District Court